

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE: SITAGLIPTIN PHOSPHATE ('708
& '921) PATENT LITIGATION

MDL No. 19-2902-RGA

MERCK SHARP & DOHME CORP.,

Plaintiff,

v.

APOTEX INC. and APOTEX CORP.,

Defendants.

C.A. No. 20-749-RGA

STIPULATION AND [PROPOSED] ORDER REGARDING CLAIM CONSTRUCTION

Plaintiff Merck Sharp & Dohme Corp. ("Merck") and Defendants Apotex Inc. and Apotex Corp. ("Apotex") (collectively, "the Parties") hereby submit the following stipulation regarding claim construction in Civil Action No. 20-749-RGA concerning U.S. Patent No. 7,468,459 (the "'459 patent"):

Whereas the Parties exchanged lists of claim terms for construction on April 2, 2021 pursuant to the Parties' Stipulation (D.I. 58, 72);

Whereas neither Merck nor Apotex identified any claim terms as requiring construction by the Court for the '459 patent;

Whereas the Parties conferred regarding the April 9, 2021 submission deadline for the Joint Claim Construction Chart (*see* D.I. 58, 72) and confirmed their agreement that no terms of the '459 patent required construction by the Court at this time, and therefore, did not submit a Joint Claim Construction Chart to the Court;

NOW THEREFORE it is hereby stipulated by and among the Parties, through their respective counsel, and subject to approval of the Court, as follows:

The parties agree that no terms of the '459 patent require a *Markman* construction by the Court at this time, *i.e.*, the Parties are not proposing competing constructions for any terms. As such, the Parties respectfully request the Court to remove from the case schedule in Civil Action No. 20-749-RGA all future claim construction deadlines and hearings with respect to the '459 patent, and in particular, the following:

- Merck's Opening *Markman* Brief (April 23, 2021)
- Apotex's Responsive *Markman* Brief (May 7, 2021)
- Merck's Reply *Markman* Brief (May 21, 2021)
- Apotex's Sur-reply *Markman* Brief (June 4, 2021)

Nothing in this stipulation shall affect any other claim construction deadlines that may remain in the MDL Action (C.A. 19-md-2902-RGA) or the related actions.

Dated: April 13, 2021

MCCARTER & ENGLISH, LLP

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**Admitted only in Michigan. Practice supervised by D.C. Bar members pursuant to D.C. Court of Appeals Rule 49(c)(8).*

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SO ORDERED this 13 day of April, 2021.

/s/ Richard G. Andrews
United States District Judge